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BIRCH STEWART KOLASCH & BIRCH  
PO BOX 747  
FALLS CHURCH, VA 22040-0747

EXAMINER
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JONG-HYUM YOON

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Appeal 2009-014063  
Application 10/667,383  
Technology Center 2400

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Before JOHN C. MARTIN, THOMAS S. HAHN,  
and ELENi MANTIS MERCADER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

### STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner's final rejection of claims 2-18. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

### INVENTION

Appellant's invention is depicted in Figure 3, reproduced below:

FIG. 3

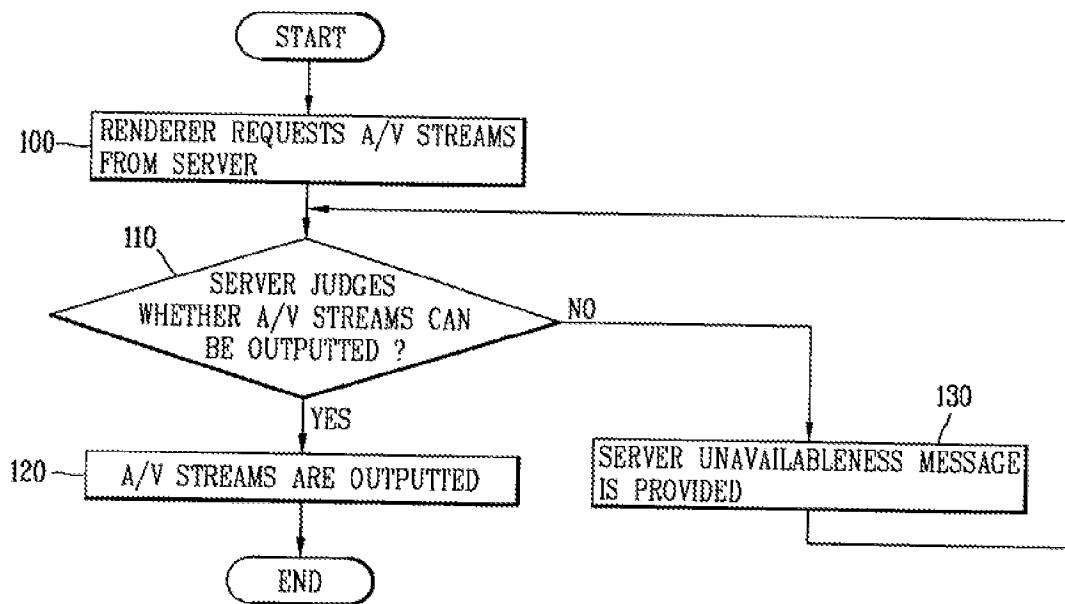


Figure 3 depicts a server that judges whether audio/video (A/V) streams can be outputted (110) to a renderer that requests the A/V streams

(100). A server unavailability message is provided to the renderer (130) if the server judges that the audio/video streams cannot be outputted.

Claims 2 and 6, reproduced below, are representative of the subject matter on appeal:

2. A method for outputting A/V streams onto a screen in response to a user's request by a home network which includes a server for outputting audio/video streams and plural renderers connected to the server through a home network, comprising:

- a step in which a renderer connected to a server requests A/V streams;
- a step in which the server judges whether A/V streams can be outputted in response to the request from the renderer; and

- a step in which the server provides the A/V streams to the renderer sequentially or simultaneously if the A/V stream can be outputted, or outputting a server unavailability message to the renderer if the server judges that the A/V streams cannot be outputted,

wherein, in the step of judging whether A/V streams can be outputted, the server compares *transmission time* of entire A/V streams and A/V stream transmission time according to a defined reproduction capability of the server required for reproducing A/V streams, and then judges whether the A/V streams can be outputted.

6. A method for outputting A/V streams onto a screen in response to a user's request by a home network which includes a server for outputting audio/video streams and plural renderers connected to the server through a home network, comprising:

- a step in which a renderer connected to a server requests A/V streams;
- a step in which the server judges whether A/V streams can be outputted in response to the request from the renderer; and

- a step in which the server provides the A/V streams to the renderer sequentially or simultaneously if the A/V stream can be outputted, or outputting a server unavailability message to the renderer if the server judges that the A/V streams cannot be outputted,

wherein, in the step of judging whether A/V streams can be outputted, the server compares the *overall transfer rate* of the A/V streams being

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reproduced and a predetermined A/V stream transfer rate on the basis of the *distance* between a position where the A/V stream requested by the renderer has been recorded and a position where the A/V stream being reproduced has been recorded.

(Emphases added.)

### THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Bleidt	US 5,671,377	Sep. 23, 1997
Brown	US 5,822,530	Oct. 13, 1998
Bachmat	US 6,189,071 B1	Feb. 13, 2001
Goldthwaithe	US 2003/0154480 A1	Aug. 13, 2003
Lam	US 6,917,569 B1	Jul. 12, 2005
Seed	US 2006/0015574 A1	Jan. 19, 2006 filed Feb. 14, 2002
Giammaressi	US 7,086,077 B2	Aug. 1, 2006 effectively filed Apr. 1, 1999

The following rejections are before us for review:

1. The Examiner rejected claims 2-4, 8, and 11-18 under 35 U.S.C. § 103(a) as unpatentable over Giammaressi in view of Goldthwaite and Seed.
2. The Examiner rejected claims 6 and 7 under 35 U.S.C. § 103(a) as unpatentable over Giammaressi in view of Goldthwaite and Seed and further in view of Lam.

3. The Examiner rejected claims 5 and 9 under 35 U.S.C. § 103(a) as unpatentable over Giammaressi in view of Goldthwaite and Seed and further in view of Bachmat.

4. The Examiner rejected claim 10 under 35 U.S.C. § 103(a) as unpatentable over Giammaressi in view of Goldthwaite and Seed and further in view of Brown.

### ISSUES

The issues concerning independent claims 2 and 6 are as follows:

Did the Examiner err by determining that the combination of Giammaressi, Goldthwaite, and Seed teaches a server that compares the “transmission time of entire A/V streams and A/V stream transmission time according to a defined reproduction capability of the server required for reproducing A/V streams, and then judges whether the A/V streams can be outputted,” as recited in claim 2?

Did the Examiner err by determining that the combination of Giammaressi, Goldthwaite, Seed and Lam teaches a server that compares the “overall transfer rate of the A/V streams being reproduced and a predetermined A/V stream transfer rate on the basis of the *distance* between a position where the A/V stream requested by the renderer has been recorded and a position where the A/V stream being reproduced has been recorded” (emphasis added), as recited in claim 6?

Appellant also separately argues claims 5 and 9, which depend on claim 2.

## PRINCIPLES OF LAW

To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *See In re Royka*, 490 F.2d 981, 985 (CCPA 1974).

The Examiner's articulated reasoning in the rejection must possess a rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). The Supreme Court stated that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting *Kahn*, 441 F.3d at 988).

## ANALYSIS

### *Analysis with respect to claims 2-4, 8, and 10-18*

The Examiner (Ans. 11-12) treats Appellant's (App. Br. 7) explanation that claim 2 reads on page 8, lines 13-20 of Appellant's disclosure as an admission that the "transmission time of the entire A/V streams" recited in claim 2 is broad enough to read on the overall transfer rate:

Appellant indicates the comparison step of the claims is described on page 8 lines 13- 20 of the disclosure, Appeal Brief pg. 7 line 16. This portion of the disclosure describes comparing the overall transfer rate of the A/V streams being reproduced, analogous to "transmission time of entire A/V streams" in the claims, to a predetermined A/V stream transfer

rate, analogous to "transmission time according to a defined reproduction capability of the server" in the claims. As a result of this comparison it is determined if a requested A/V stream will be outputted. . . . *Appellant defines the claimed "transmission time" as transfer rates on page 8 lines 13-20 of the disclosure.* Therefore, the bandwidth disclosed by Giammaressi is equivalent to the transfer rates disclosed by appellant.

(Ans. 11-12 (emphasis added).) Appellant has not even acknowledged the Examiner's reliance on the discussion of claim 2 at page 7 of the Brief, let alone demonstrated any error in the Examiner's treatment of that discussion as an admission regarding the scope of the claim. Also, Appellant's argument (Reply Br. 3-4) that it is not enough to show that the prior art discloses or suggests subject matter that is "analogous" or "equivalent" to the claimed subject matter is unpersuasive. Although the Examiner uses these terms in the above-quoted paragraph, it is clear from pages 11-12 of the Answer that the Examiner finds that the language in question in claim 2 reads on Giammaressi. That is, the Examiner relies on the above-noted admission to show that the recited "transmission time" reads on an overall transfer rate and then finds that Giammaressi's disclosed bandwidth represents an overall transfer rate. *See Answer 11*("Giammaressi defines bandwidth as a transmission rate ('an appropriate bandwidth of 9 Mbps', col. 6 lines 37-38).").

Accordingly, we will affirm the Examiner's rejection of representative claim 2 and for the same reasons we will also affirm the rejection of dependent claims 3-4, 8, and 10-17 and of independent claim 18 because



Appellant relies on the same arguments as those presented for claim 2 (App. Br. 18-19).

*Analysis with respect to claims 6 and 7*

With respect to claim 6, we agree with Appellant's argument (App. Br. 19-20) that one skilled in the art would not have been motivated to modify Giammaressi in view of Lam's disk array storage device managing system to determine hard drive seek times in order to judge whether A/V streams can be outputted to the renderer. At best, Lam teaches determining seek distances and converting them into time (col. 3, ll. 2-3) for the purpose of dynamic reallocation of data on a disk array storage device based on actual usage (col. 2, ll. 64-65). Lam does not cure Giammaressi's deficiency of *judging whether A/V streams can be outputted* by the server comparing "the overall transfer rate of the A/V streams being reproduced and a predetermined A/V stream transfer rate on the basis of the *distance* between a position where the A/V stream requested by the renderer has been recorded and a position where the A/V stream being reproduced has been recorded" (emphasis added), as recited in claim 6. Just because Lam teaches that distances between two locations can be converted into time, that does not equate to judging whether A/V streams can be outputted based on the distance between different locations.

Furthermore, the Examiner's articulated motivation (Ans. 8) for combining the references in order to obtain the recited benefit of providing dynamic disk allocation based on actual usage (citing Lam's col. 2, ll. 64-

65), does not support the legal conclusion of obviousness, because claim 6 does not just require determining the read time between two locations but also requires doing so for the purpose of *judging whether A/V streams can be outputted*. See *KSR*, 550 U.S. at 418. The Examiner's statement that "the combination teaches the transfer rate of a requested stream is *dependent upon* the locations in memory of the requested stream and the currently produced streams" (Ans. 13) (emphasis added) fails to recognize this requirement of claim 6.

For the above reasons, we will reverse the Examiner's rejection of claims 6, as well as the rejection of dependent claim 7, as neither of the additionally relied upon references of Goldthwaite and Seed cure the above-noted deficiency.

*Analysis with respect to claims 5 and 9*

With respect to claims 5 and 9, which depend on claim 2, Appellant presents similar arguments with respect to the deficiency identified with the Lam reference *supra*, with respect to the Bachmat reference (App. Br. 22-23). More particularly, Appellant argues that Bachmat is directed to managing resources in a disk array storage device and has nothing whatsoever to do with judging whether A/V streams can be outputted to the user. We agree that at best Bachmat (col. 11, ll. 45-49) teaches determining the total time that a physical disk operates in performing transfers including all of the seek, latency, and transfer times associated with that activity.

Accordingly, we will reverse the Examiner's rejection of claim 5 as well as the rejection of claim 9.

### CONCLUSIONS

The Examiner did not err by determining that the combination of Giammaressi, Goldthwaite, and Seed teaches a server that compares the "transmission time of entire A/V streams and A/V stream transmission time according to a defined reproduction capability of the server required for reproducing A/V streams, and then judges whether the A/V streams can be outputted."

The Examiner erred by determining that the combination of Giammaressi, Goldthwaite, Seed, and Lam teaches a server that compares the "overall transfer rate of the A/V streams being reproduced and a predetermined A/V stream transfer rate on the basis of the *distance* between a position where the A/V stream requested by the renderer has been recorded and a position where the A/V stream being reproduced has been recorded" (emphasis added).

The Examiner also erred by determining that the combination of Giammaressi, Goldthwaite, and Bachmat discloses the limitations recited in dependent claims 5 and 9.

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ORDER

The decision of the Examiner to reject claims 2-4, 8, and 10-18 is affirmed. The decision of the Examiner to reject claims 5-7 and 9 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

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AFFIRMED-IN-PART

ELD

BIRCH STEWART KOLASCH & BIRCH  
PO BOX 747  
FALLS CHURCH, VA 22040-0747